

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

FILED
U.S. DISTRICT COURT
2018 FEB 13 P 1:12
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

**PAUL KENNETH CROMAR,
et al.,**

Defendant.

Case No.: 2:17-cv-01223-RJS

**DEFENDANT'S MOTION
TO DETERMINE THE
subject-matter jurisdiction
OF THE COURT**

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THE *subject-matter jurisdiction* OF THE COURT**

1) Comes now, Paul Kenneth: Cromar, Defendant, *pro se*, [*en pauperis*,] in this matter, who herein files under Fed.R.Civ.P. Rule 12(b)(1) - *Lack of subject-matter jurisdiction*; 12(b)(6) - *Failure to State a Claim for which relief can be granted by the court*; and 12(h)(3) - *Lack of subject-matter jurisdiction, defense preserved*; this *Motion to Determine the subject-matter jurisdiction of the district court* that can be taken over this civil action, as it has been argued by the Plaintiff United States on the record of the court in its *Complaint*.

"There is a presumption against existence of federal jurisdiction; thus, party invoking federal court's jurisdiction bears the burden of proof. 28 U.S.C.A. §§ 1332, 1332(c); Fed. Rules Civ. Proc. Rule 12(h)(3), 28 U.S.C.A."

"Lack of jurisdiction cannot be waived and jurisdiction cannot be conferred upon a federal court by consent, inaction, or stipulation. 28 U.S.C.A. §1332."

2) The Plaintiff United States **fails** in its *Complaint* to show on the record of the action **all three required elements**, of the complete and **fully** established, alleged granted, *subject-matter jurisdiction* of this district court that it is alleged can be taken over this civil action; - which it must do before this court may proceed with the entertainment of the action in the court. The court cannot lawfully proceed before that complete and proper, constitutionally granted *subject-matter jurisdiction* of the court, is established and shown and *taken* by the court on the formal record of the action in the court.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F.2d 188; *Chicago v. New York*, 37 F.Supp. 150

"If parties do not raise question of lack of jurisdiction, it is the duty of the federal court to determine the manner sua sponte. 28 U.S.C.A. §1332."

3) Title 28 Sections 1340 and 1345, cited in the plaintiff's *Complaint* are insufficient, in and of themselves, to establish the specific *subject-matter jurisdiction* of the court that exists with specific respect and application of the force of law to the named defendants, and that can lawfully be *taken* by the court over this action *as argued* in the *Complaint*.

"So, we conclude, as we did in the prior case, that, although these suits may sometimes so present questions arising under the Constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts." *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

4) Furthermore, a federal court cannot lawfully establish or take an alleged *subject-matter jurisdiction* over **any** civil action, under statutes (of the United States Code) **alone**.

"It remains rudimentary law that "... regards all courts of the United States inferior to this tribunal [SCOTUS], two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. . . ." [Emphasis in original.] *Finley v. United States*, 490 U.S. 545 (1989).

"It is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute." *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003)

5) The failure of the court to identify, establish and declare on the record of the court, all three required elements of the alleged *subject-matter jurisdiction of the district court* that can be taken over this civil action, is improper, and is a violation of the legal *due process* required of the court in this action, and of the Federal Rules of Civil Procedure controlling it.

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." 100 S. Ct. 2502 (1980)

"A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time." 261 Kan. at 862.

6) Upon review, Defendant finds that there are two separate and distinct **conflicting** *lines of constitutional authority* that are being used in the federal courts with respect to the enforcement of the federal personal income tax. The two **different** *lines of authority* contradict each other, and thus each results in a distinctly different possible *subject matter jurisdiction* that can be taken by the district court over an action like this one.

7) These conflicting lines of authority are apparently both cited, practiced, and enforced in the different federal courts, with regards to the *constitutional nature* of the federal income tax, *direct* ¹ or *indirect* ², providing the specific constitutional foundation for the specific *subject-matter jurisdiction* of the federal court that exists to allow it to entertain these enforcement actions as filed by the Plaintiff United States. This conflict between the two different *lines of authority* exists at all levels of the federal court system: district, circuit, and Supreme.

¹ see *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), *Parker v. Comm'r*, 724 F.2d 469 (5th Cir. 1984), and *Lovell v. United States*, 755 F.2d 517 (7th Cir. 1984)

² see *Brushaber v. Union Pacific RR Co.*, 240 US 1 (1916), and *Stanton v. Baltic Mining*, 240 US 103 (1916)

8) This conflict in the federal courts occurs within the rulings of the federal courts regarding the specific *constitutional nature* of the federal personal income tax that is allowed under the 16th Amendment. These conflicting and contradictory lines of authority, both being practiced and enforced in the federal courts, calls into question the **true subject-matter jurisdiction** of the district courts that can be taken over civil actions filed by the United States, because the two different *lines of constitutional authority* **each result** in an entirely **different subject-matter jurisdiction** that allegedly can be taken by the federal court over this civil enforcement action.

9) Unless the court discloses to the Defendant which *line of authority* it endorses, and also discloses on the record, the specific *subject-matter jurisdiction* of the court that has been taken over this enforcement action, then because of that failure to disclose the *subject-matter jurisdiction*, and because of the two different *subject-matter jurisdiction* possibilities, each of which requires a distinctly different answer and defense; - then the Defendant is denied legal *due process* by the court's refusal to disclose, because without a disclosed constitutional foundation the entire action becomes vague, arbitrary, and capricious, because without knowledge of the **specific** constitutional foundation to the claims made against him, no defendant is able, or allowed by the court apparently, to properly defend himself from the assault on his person and the claims for tax laid directly at his door.

10) The Defendant has a constitutional legal *due process right* to know the specific *subject-matter jurisdiction* that is alleged to exist in this civil action, and that has been taken, and that is relied upon by this district court to hold jurisdiction over this case, before the Defendant can be required to argue in the court or answer the complaint.

11) Without this fundamental disclosure to the Defendant, of the specific *subject-matter jurisdiction* taken by the court, it becomes **impossible** for any defendant to argue properly in defense of his life, property and *rights*, under the law, because, through the failure to disclose the *subject-matter jurisdiction* of the court, the law, and its foundational authorities, are

effectively, improperly kept *secret* from the Defendant, who cannot possibly properly plead a defense to a *secret* allegation that he is never informed as to the true nature of.

12) Unless the particular and specific *line of authority* and *subject-matter jurisdiction* that is relied upon and used by this U.S. district court in its decisions, and which is enforced by this court's proceedings, is disclosed by the court to the Defendant **beforehand**, in answering this *Motion*, the Defendant is wrongfully and prejudicially prevented by the refusal of the district court to provide the required legal *due process* to the Defendant, from being able or allowed to *properly* or *appropriately* argue a defense in the district court.

13) The two conflicting *lines of authority* that the Defendant has identified exist in the federal courts, that create this confusion about the specific *subject-matter jurisdiction* of the federal courts that is taken over these civil actions for income tax collection, are:

I. The Supreme Court's *line of authority*

14) Under the controlling *line of authority* established by the Supreme Court of the United States, and supported by the long line of historical holdings under it, the federal personal income tax under the 16th Amendment, *irregardless* of the adopted language of the 16th Amendment, is an *indirect* *impost*, *duty*, or *excise* tax that is authorized **under** Article I, Section 8, clause 1 of the U.S. Constitution; - and **not** under the 16th Amendment; - which *indirect* tax must only be *uniform* in its geographical imposition, and specifically is not required to be *apportioned* because it is *indirect* in nature and the apportionment requirement does **not** apply to *indirect taxation*.

[The Congress] "shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. *Cf. Burnet v. Brooks*, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 12." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581.

"Whether the tax is to be classified as an 'excise' is in truth not of critical

importance. If not that, it is an 'impost' (*Pollock v. Farmers' Loan & Trust Co.*, 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soule*, 7 Wall. 433, 74 U. S. 445), or a 'duty' (*Veazie Bank v. Fenno*, 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore*, 178 U. S. 41, 178 U. S. 46). **A capitation or other 'direct' tax it certainly is not.**" *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

"The [income] tax being an *excise*, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. *Knowlton v. Moore*, *supra*, p. 178 U. S. 83; *Flint v. Stone Tracy Co.*, *supra*, p. 220 U. S. 158; *Billings v. United States*, 232 U. S. 261, 232 U. S. 282; *Stellwagen v. Clum*, 245 U. S. 605, 245 U. S. 613; *LaBelle Iron Works v. United States*, 256 U. S. 377, 256 U. S. 392; *Poe v. Seaborn*, 282 U. S. 101, 282 U. S. 117; *Wright v. Vinton Branch Mountain Trust Bank*, 300 U. S. 440." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 583

Previous to the adoption of the 16th Amendment the taxation of *income* had been repeatedly upheld as a legitimate exercise of the *indirect* taxing powers given to Congress, to tax by *excise* under authority granted by Article I, Section 8. see *Springer v. U. S.*, 102 U.S. 586, 26 L. ed. 253 (1880); *Pollock v. Farmer's Loan & Trust*, 158 U.S. 601, (1895); *Pacific Ins. Co. v. Soule*, 7 Wall. 433, 19 L. ed. 95; *Spreckels Sugar Ref. Co. v. McClain*, 192 U.S. 397 , 48 L. ed. 496, 24 Sup. Ct. Rep. 376.; *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, at 416-417 (1913).

"... by the previous ruling [*Brushaber v Union Pacific R. Co.*] it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the **category of indirect taxation** to which it **inherently belonged**" *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), at 112

9. This *line of authority* of the Supreme Court of the United States plainly **declares** that the federal personal income tax is a **uniform indirect** tax under Article I, Section 8, clause 1, of the U.S. Constitution, of the form *impost, duty, or excise*; **irregardless** of the 16th Amendment's language and adoption.

10. The *subject-matter jurisdiction* of the federal courts that results under this Supreme Court *line of authority* is a *subject-matter jurisdiction* that can be taken by the federal courts that allows them to enforce with law the *indirect* ***impost***, ***duty***, and ***excise*** taxing powers conferred and made enforceable under Article I, Section 8.

II. The Circuit Courts' *line of authority*

11. However, there does exist a **contradictory** position in the U.S. courts, to this "*indirect*" holding and cited *line of authority*, at least in some of the U.S. Circuit Courts of Appeals, with regards to these well established constitutional foundations upholding the federal income tax **only** as an *indirect* tax under Article I, Section 8, clause 1, as established in the *Brushaber* and *Baltic Mining* case decisions, *supra*.

12. Some of the federal courts in America, both district and circuit, appear to have **completely reversed** these clear, controlling, Supreme Court holdings and established *line of authority*, by holding that the federal personal income tax is now to be enforced in the federal courts, not as a geographically *uniform indirect impost, duty, or excise* tax under Article I, but rather, as a *direct, unapportioned, disproportionate* tax on *income* under the 16th Amendment without regard or respect for any of the limitations imposed under Article I on the *direct* taxation powers granted.

13. The Circuit Courts of Appeals adopting this position, of the *unapportioned direct* tax under the 16th Amendment, (rather than the *uniform indirect* tax under Article I that was upheld by the Supreme Court in 1913), do this in their own decisions, **without writing a single word** of *analysis* about the *constitutional nature* of the tax at issue, or its history, or properly completely citing any appropriate text of the controlling *Brushaber v. Union Pacific RR Co.* decision that they re-interpret with their own contradictory opinions, effectively replacing in law the Supreme Court's true holding, with a complete **reversal** of it. They simply proclaim it to be so without explanation as to how that might even be possible.

without an *enabling enforcement clause* in the Amendment to authorize and allow Congress to write law to enforce the new *direct* power alleged created.

14. Those circuit court decisions, cited as the legal authority that is relied upon by the lower courts for the establishment of this alternate, "*direct unapportioned*" tax and *line of authority* for the enforcement of federal personal income tax, include:

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990),
(which simply asserts the tax is *direct* and unapportioned, reversing *Brushaber* without actually citing or quoting any text from that case opinion);

Parker v. Comm'r, 724 F.2d 469 (5th Cir. 1984).
(which also asserts the tax is *direct* and unapportioned, reversing *Brushaber* without citing or quoting any actual text from the case opinion);

Lovell v. United States, 755 F.2d 517 (7th Cir. 1984),
(which simply cites to *Parker v. Comm'r*. to make its assertions);

United States v. Sloan, 755 F.2d 517, 519 (7th Cir. 1984),
(which simply cites to *Lovell* and *Collins* to make its assertions);

In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989),
(which simply cites to *Lovell* and *Parker* to make its assertions).

15. This new *line of authority* established by the Circuit Courts declares that the *subject-matter jurisdiction* of the court over the enforcement of the federal personal income tax is based on a *direct* tax under the 16th Amendment, **not** an *indirect* tax under Article I, as was plainly and clearly held by the Supreme Court in its controlling decisions (cited).

The subject-matter jurisdiction of the District Court is at Issue

16. These two opposing and contradictory lines of authority, both being practiced in the various federal courts, and both being argued in different cases, under the two different resulting *subject-matter jurisdictions*, create a real legal problem for the Defendant, and the district court in this action.

17. The true *line of authority* **cannot** be **both** of these competing lines of authority, with two possible *subject-matter jurisdictions*; - and the specific *subject-matter jurisdiction* taken by the court must be disclosed to the Defendant, in order for any Defendants to be able to properly and appropriately plead a proper answer and defense in the action.

18. As long as these conflicting *lines of authority* both exist in the federal courts, and **until** this honorable court identifies and declares on the record of the court in this action, the *line of authority* that is **accepted** by this court and the specific *subject-matter jurisdiction* of the court taken under it, (and the opposing contradictory standard that is **rejected** by this court); then it is **impossible** for either the Defendant or the Plaintiff, or the district court itself, to identify the true *subject-matter jurisdiction* of the court to entertain the civil action, because it cannot, or will not, identify the fundamental constitutional nature of the tax, *direct* or *indirect*, which controls the determination of the true and proper *subject-matter jurisdiction* of the court over the civil action.

19. The Defendant of course, does not want to offend this honorable court by arguing *frivolously* under the *line of authority* that is **rejected** by this court, rather than under the correct *line* that is accepted by it. But, in order to avoid those *frivolous*, arguments, the court **needs to identify for the Defendant NOW, which argument is deemed to NOT be frivolous** by this court !

20. Is the *subject-matter jurisdiction* of the this honorable court based on the power to enforce with law a *uniform indirect* tax under authority of **Article I**, Section 8 as *impost, duty or excise*, which taxing *forms do not* touch or reach the Defendant's earnings or *income*; or is it based on an alleged power to enforce with law an *unapportioned, disproportionately imposed, direct* tax under alleged authority of the **16th Amendment** without any enabling enforcement clause providing legislative enforcement authority for Congress to exercise? Which is it ?

21. This action **cannot** go forward in this court until this controlling legal question of the true *subject-matter jurisdiction* of this court is settled, identified, and established on the record of

the action, under the single **consistent** *line of precedential authority* that the court identifies **as that which it operates under and enforces.**

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America*, 511 US 375 (1994)

22. This fundamental disclosure of the specific constitutional foundation to the alleged *subject-matter jurisdiction* of the court, is absolutely necessary in order to establish this court's ability to properly take a granted *subject-matter jurisdiction* over this civil action, - from that identified constitutional foundation, - together with the *personal jurisdiction* over the Defendant necessary in the action, sufficient to allow the court to entertain the action or render a decision or judgment for, or against, any party in it.

"However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them;" *State of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, 718 (1838)

In a long and venerable line of cases, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. See, e.g., *Capron v. Van Noorden*, 2 Cranch 126; *Arizonans for Official English v. Arizona*, 520 U.S. 43, (1997). *Bell v. Hood*, *supra*; *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 465, n. 13; *Norton v. Mathews*, 427 U.S. 524, 531; *Secretary of Navy v. Avrech*, 418 U.S. 676 , 678 (per curiam); *United States v. Augenblick*, 393 U.S. 348 ; *Philbrook v. Glodgett*, 421 U.S. 707, 721; and *Chandler v. Judicial Council of Tenth Circuit*, 398 U.S. 74, 86-88, distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an *ultra vires* act. Pp. 8-17.

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." *United States v. Cotton*, 535 U.S. 625, 630 (2002); *Accord Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger*, 125 Ohio.App.3d 456. (1995) ("If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*."); *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006) ("[D]enying a motion to vacate a void judgment is a per se abuse of discretion.").

Summary & Conclusion

23. Therefore, having identified this plain and clear **conflict** in the federal courts that exists as to the two different *subject-matter jurisdictions* and underlying *lines of precedential authority* that are applied within the federal courts regarding the *constitutional nature* of the federal personal income tax, and its enforcement as one type of tax or another; the Defendant *moves* this honorable court for a plain and clear statement on the record of the action clearly identifying the **specific line of authority** that this U.S. district court endorses, adopts, imposes, and enforces in its decisions with regards to the *constitutional nature* of the federal personal income tax, **together** with a plain and clear **declaration** of the specific *subject-matter jurisdiction* of the district court **that exists and has been taken** by the court over this civil enforcement action, to allow and empower the court to entertain the action.

24. Is the federal personal income tax that this court enforces, deemed to be a **Direct unapportioned** tax under the 16th Amendment, or a *uniform Indirect* tax under Article I, Section 8 ? Which is it, because it cannot be both ?

25. Unless the court makes this fundamental disclosure to the Defendant of the specific *subject-matter jurisdiction* of the district court that has been taken and is relied upon by the court to entertain the action, the Defendant will be **prejudicially** prevented by the court's improper and prejudicial refusal to disclose this essential *subject-matter jurisdictional*

information, required by the rules of both civil procedure and legal *due process*³, from being able to properly argue the law as it is practiced, applied, and enforced by and within this court, as opposed to some other court practicing the alternate, contradictory *line of authority*, and taking the opposing *subject-matter jurisdiction*, of the two identified to exist and be practiced in the federal courts.

26. Further, **without** a specific *subject-matter jurisdiction* of the district court being **identified** on the record now, the Defendant would clearly be **entitled** to a *dismissal* of the civil action under Fed.R.Civ.P. Rule 12(b)(6) - *Failure to state a claim upon which relief can be granted by the court* and under Fed.R.Civ.P. Rule 12(b)(1) - *Lack of subject-matter jurisdiction*, because without the **specific** identification by either the plaintiff or the court, of a **specific** constitutionally granted and **enforceable** power and authority to act (to tax), as operationally practiced by the Internal Revenue Service in fact in enforcing the *claims* for alleged tax, the **undisputed constitutionality** of the taxing power becomes completely irrelevant because the whole alleged constitutional legal foundation becomes vague and arbitrary under the **multiple constitutional forms** of taxing powers authorized therein.

27. Is the plaintiff's *Complaint* pursuing the enforcement of an **undisputed** constitutional taxing power that is *operationally practiced* by the Internal Revenue Service Agents and Officers, as a **direct** tax, or an **indirect** tax. ? Both *forms* are authorized. Both *forms* are certainly *constitutional*. Which *form* is pursued for enforcement by the plaintiff's *Complaint*.

³ The courts have held that "*due process*" requires "an orderly proceeding wherein a person is served with notice, actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court **having power to hear and determine the case**. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 190. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and **it forbids condemnation without a hearing**. *Pettit v. Penn.*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U.S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" **is the opportunity to be heard**, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to **assert before the appropriate decision-making body the reasons for such choice**. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else "due process" means **fundamental fairness and substantial justice**. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." *Black's Law Dictionary* pg. 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

28. And how is the alleged *subject-matter jurisdiction* of the court, taken by the court over the civil action to enforce that particular and specific *operational practices* utilized by the plaintiff in manufacturing the claim of tax alleged owed ?

29. Until that question is answered, identifying the **specifically** invoked *subject-matter jurisdiction of the court*, a defendant cannot answer or plead to the *Complaint* because a defendant does not know whether to frame his answer in terms of arguments addressing the apportionment requirement **still** controlling the enforcement of **direct** taxation under Article I, - **or**, addressing the uniformity requirement controlling the enforcement of **indirect** taxation under Article I, Section 8.

30. And of course, any failure or refusal of this judicial duty to disclose the **specific** foundational constitutional authorities and *subject-matter jurisdiction* of the court taken, would blatantly violate the Defendant's constitutional *Right* to have legal *due process* provided to him in, and by, the U.S. district court in all proceedings on those courts, because the refusal to disclose a **specific** *subject-matter jurisdiction* relied upon by the court, and the **specific** *subject-matter jurisdiction* taken over a civil action, would be both **arbitrary** and **capricious**; an *abuse of discretion* by the court; and an improper attempt by the court to operate, essentially, under a *star-chamber-like* **secrecy** that is forbidden by the *subject-matter jurisdiction* disclosure requirements of both the Rules of Federal Civil Procedure and constitutional legal *due process*.

31. The federal courts in the United States of America are **not allowed** to operate **in secret**, or under a **secreted** and **undisclosed** *subject-matter jurisdiction*. Not even to collect the federal *income tax*.

32. The *subject-matter jurisdiction* of the district court, and the *line of authority* relied upon by the court to establish that *jurisdiction*, **must be disclosed** on the record of the civil action, or the court would be cheating the Defendant out of the constitutional legal *due process* required of the court; and of his first defense under the Federal Rules of Civil Procedure, Rules 12(b)(1) or (2), or (6), or 12(h)(3).

33. Therefore, specifically, what *subject-matter jurisdiction* has been taken by the court in this case over the action ? Is the constitutional foundation for this action a *uniform indirect* tax imposed under authority of Article I, Section 8, clauses 1 and 18 of the U.S. Constitution, as *impost, duty or excise* ?

34. Or, is it an *unapportioned, disproportionate* application of a *direct* taxing power authorized solely under the adoption of the 16th Amendment, as argued by the Plaintiff United States ?

35. And just what exactly is the *subject-matter jurisdiction* of the court that is established and possessed by the court over this civil action under that identified and endorsed *line of authority* enforcing the particular constitutional power **specifically identified** in this action on the record, as exercised and *operationally practiced* by the Plaintiff United States?

36. Defendant *moves* this honorable U.S. district court for a plain and clear answer on the record of the action as to the specific *line of authority* that is applied and utilized in this honorable federal court; and to declare as required the resulting specific *subject-matter jurisdiction* of the court that has been taken by the court over this entire civil action.

Prayer for Justice

37. Defendant prays this honorable court will either compel the plaintiff to fully answer the *Motion to Determine the subject-matter jurisdiction of the Court*, or do so itself, - addressing the two conflicting *lines of authority* and two different *subject-matter jurisdictions* that exist and are inconsistently taken in the federal courts regarding the *constitutional nature* and the enforcement of the federal income tax under Article I, and or the 16th Amendment, and **declare** on the record of these proceedings, before proceeding one step further, which of the two conflicting *lines of authority* in existence, regarding the fundamental *constitutional*

nature of the federal personal income tax, that this U.S. district court applies and enforces in its decisions and opinions.

38. Furthermore, upon that declaration, the plaintiff or the court must plainly and clearly **identify** on the record of the action, the resulting *subject-matter jurisdiction* of the district court that is alleged to exist, to be taken over the civil action by the court, - specifically including the clear and **specific identification** of **all three** of the required elements of a **properly** and **fully** *constitutionally* granted *subject-matter jurisdiction* of the court that may be legitimately taken over this tax enforcement civil action by the plaintiff United States, *i.e.*:

- (1) a specific power must be granted by the Constitution or Amendment for Congress to exercise;
- (2) a specific **grant** of authority for Congress **to write law** must be made by the Constitution or Amendment, with respect to the administration and enforcement of the **specific power** granted in (#1) above⁴; and,
- (3) a specific statute must be legislatively enacted by an **authorized** Congress, with specific application to the enforcement of the specific *power* alleged granted and exercised in (#1) above, and **made enforceable** with law from a so-authorized Congress, under (#2) above.

39. Further, in every legal action in the federal courts, both civil and criminal, either the Plaintiff in the action or the court itself, must specifically identify and explain to every Defendant in the action how the specific *subject-matter jurisdiction* of the court alleged taken over the legal action has been determined, by disclosing to the Defendant its three essential elements as enumerated above, together with an explanation of how that alleged, enforceable, *subject-matter jurisdiction* alleged taken by the court over the legal action, reaches or touches the Defendant's life activities, sufficient to allow the court to justify and sustain further proceedings in the action against the Defendant under the identified authority.

⁴ *i.e.*: a specific enabling enforcement clause of the Constitution, **or one of its** Amendments, must be shown to have been made applicable to the **specific** *taxing power* alleged *constitutionally* granted, and *operationally practiced* under (#1) above;

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Kenneth Cromar", written over a horizontal line.

Paul Kenneth: Cromar
9870 N. Meadow Drive
Cedar Hills, UT 84062 usA

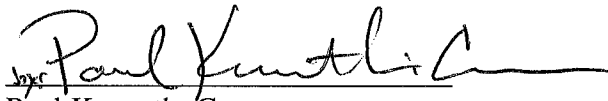
February 12, 2018

CERTIFICATE OF SERVICE

I, Paul Kenneth: Cromar, certify that a true copy of the attached *Motion* has been served via Certified Mail to the following:

Ryan S. Watson
Trial Attorney, US Department of Justice, Tax Division
P.O. Box 683
Washington, D.C. 20044

Certified Mail # 7010 0290 0000 6869 8710

A handwritten signature in black ink, appearing to read "Paul Kenneth: Cromar", written over a horizontal line.

Paul Kenneth: Cromar
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February 13, 2018